Shrady (W.)

THE LAW

IN REFERENCE TO

SUICIDE AND INTEMPERANCE

IN

LIFE INSURANCE.

READ BEFORE THE NEW YORK MEDICO-LEGAL SOCIETY

BY

WILLIAM SHRADY, LL.B.,

COUNSELOR-AT-LAW.

Presented by Dr. J. E. Peters

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NEW YORK:
C. C. HINE—INSURANCE MONITOR.
1869.

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PUBLISHED AT THE OFFICE OF THE

INSURANCE MONITOR,

176 Broadway, N. Y.

The *Monitor* is the oldest Insurance Journal in the United States, and the largest in the World. It is filled monthly with useful and interesting Insurance matter. No Agent, Solicitor, or other person interested in the business of Insurance, can afford to be without the intelligence published by the *Monitor*.

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[Read before the New York Medico-Legal Society.]

Life insurance is usually effected in this country in a way quite similar to that of fire insurance by our mutual companies; that is, an application must be first made by the insured; and to this application queries are annexed by the insurers, which relate with great minuteness and detail to every topic which can affect the probability of life. These must be answered fully; and if the insured be other than the life insured, there are usually questions for each of them. In some cases, there are also some questions asked, which should be answered by the physician of the life insured, and others by his friends or relatives; or other means are provided to have the evidence of the physician and friends. Every company has a different way of putting their questions, and it is not worth my while here to speak of them in detail. The rules, as to the obligation of answering them, and as to the sufficiency of the answers, must be the same in life insurance as in fire insurance; or rather must rest upon the same principles.

Life insurance policies always contain certain restrictions or limitations as to place; the life insured are not permitted

to go beyond certain limits or certain places. The exception, however, which has created perhaps the most discussion, is that with regard to self-inflicted death, which avoids the policy. This self-destruction may be voluntary and wrongful, or it may result from disease or insanity, for which the person destroying himself should not be held responsible for the act committed. If a policy is accepted, which expressly declares that should the insured die by his own hands, whether willfully, knowingly or intentionally, or otherwise, there is no doubt that this clause would have its full and literal effect. This, however, becomes a difficult question to solve, where the words "die by his own hands" are used, as a great many cases might arise which would come within that condition.

In Borradaile *v.* Hunter, 5 Manning & Granger, 639, the policy contained a proviso, that in case "the assured should die by his own hands, or by the hands of justice, or in consequence of a duel," the policy should be void. The assured threw himself from Vauxhall Bridge into the Thames, and was drowned. In a suit on the policy, Erskine, J., instructed the jury "that if the assured, by his own act, intentionally destroyed his own life, and that he was not only conscious of the probable consequences of the act, but did it for the express purpose of destroying himself voluntarily, having at the time sufficient mind to will to destroy his life, the case would be brought within the condition of the policy; but if he was not in a state of mind to know the consequences of the act, then it would not come within the condition." The jury found that the assured "threw himself from the bridge with the intention of destroying his life; but at the time of committing the act he was not capable of judging between right and wrong." It was held (Tindall, J., dissenting) that the policy was avoided, as the proviso included all acts of intentional self-destruction, and was not limited by the accompanying proviso to acts of felonious suicide.

Erskine, J., said: "Looking simply at that branch of the proviso upon which the issue was raised, it seems to me that the only qualification that a liberal interpretation of the words, with reference to the nature of the contract, requires,

is, that the act of self-destruction should be the voluntary and willful act of a man having at the time sufficient powers of mind and reason to understand the physical nature and consequences of such act, and having at the time a purpose and intention to cause his own death by that act; and that the question whether at the time he was capable of understanding and appreciating the moral nature and quality of his purpose is not relevant to the inquiry, further than as it might help to illustrate the extent of his capacity to understand the physical character of the act itself. It appears indeed, to me, that excluding for the present the consideration of the immediate context of the words in question, the fair inference to be drawn from the nature of the contract would be, that the parties intended to include all willful acts of self-destruction, whatever might be the moral responsibility of the assured at the time; for, although the probable results of bodily disease, producing death by physical means, may be the fair subjects of calculation, the consequences of mental disorder, whether produced by bodily disease, by external circumstances or by corrupted principle, are equally beyond the reach of any reasonable estimate. And reasons might be suggested why those who have the direction of insurance offices should not choose to undertake the risk of such consequences even in cases of clear and undoubted insanity. It is well known that the conduct of insane patients is, in some degree, under the control of their hopes and fears, and that especially their affection for others often exercises a sway over their minds where fear of death or of personal suffering might have no influence; and insurers might well desire not to part with this restraint upon the mind and conduct of the assured, nor to release from all pecuniary interest in the continuance of the life of the assured, those on whose watchfulness its preservation might depend; and they might most reasonably desire to exclude from all questions between themselves and the representatives of the assured, the topic of criminality so likely to excite the compassionate prejudices of a jury which were most powerfully appealed to on the trial of this cause."

Ch. J. Tindall held that the terms "dying by his own hands" being associated with the terms "dying by the hands

of justice, or in consequence of a duel," which last cases designated criminal acts, on the principle of *noscitur a sociis* should be interpreted as meaning self-destruction.

It will be observed the majority of the Court in the above case exclude from the condition cases of mere accident, and of insanity extending to unconsciousness of the act done or of its physical consequences.

In Clift *vs.* Schwabe, 3 C. B., 437, which was determined in the Exchequer Chamber in 1846, where the condition was that the policy should be void if the life insured "should commit suicide," it was held by a majority of the Court (Rolfe, Baron; Patteson, J.; Alderson, B.; Parke, B.) that the terms of the condition included all acts of voluntary self-destruction, whether he was or was not at the time a responsible moral agent. Pollock, C. B., and Wightman, J., dissented.*

But the proper way no doubt is to look at the probable intention of the insurers who seem only to exclude all criminal acts; all other risks they are willing to take. The following decisions show in what light the Courts regard criminal acts of the insured, and suicide or death by one's own hands would only be within the restriction of the policy where it was voluntary and wrongful.

In Fauntleroy's case there was no clause in the policy in regard to death by the hands of justice, but the life assured was convicted of forgery, sentenced and executed. The policy was sustained at the Rolls, but upon appeal to the House of Lords the decree was reversed.

Lord Chancellor Lyndhurst held that a policy expressly insuring against such a risk would be void on the plainest principles of public policy, as taking away one of the restraints operating on the minds of men against the commission of crime, namely, the interest we have in the welfare and prosperity of our connections, and effect could not be given to it on an event which, if expressed in terms, would have rendered the

*So held also in Dufaur *v.* Professional Life Assurance Company, 25 Beavins, 599.

policy, as far as that condition went at least, altogether void. Where a policy provided that it should be void if the life assured "should die in the known violation of a law of the State," it was held that to avoid it, the killing of the life assurred, in an altercation, must have been justifiable or excusable homicide, and not merely under circumstances which would make the slayer guilty of manslaughter.*

Where a slave refused to surrender to patrols, and, attempting to escape, was shot by one of them in the right side, of which wound he died in a few minutes, this was held not to come within the cases excepted in a policy of insurance on his life of "death by means of invasion, insurrection, riot or civil commotion, or of any military or usurped authority, or by the hands of justice."†

A policy of life insurance contained a proviso, that if the insured should die "in the known violation of any law of these States," said policy should be void. The insured was shot by a party whom he had previously struck; held, that if the blow amounted to an assault, and the shooting was a part of the same continuous transaction, and took place in consequence of said assault, the policy was void. By a majority of the Court, it is not essential that the deceased should have had reason to believe that his criminal act might expose his life to danger.‡

A policy of life insurance contained a condition "that in case the said E. shall die by his own hand, or in consequence of a duel, or the violation of any law, or by the hands of justice, the policy shall be void," the jury found that the said E. (on whose life the policy was taken) killed himself as "the result of a blind and irresistible impulse, over which the will had no control;" held, that the insurers were liable. The condition did not apply to suicide in a fit of insanity (Kent, J., dissenting).‖

*Harper *v.* Phœnix Insurance Co., 18 Missouri, 109; 19 Missouri, 506.

†Spruill *v.* N. C. Mutual Life Insurance Co., 1 Jones' N. C., 126.

‡Cluff *v.* Mutual Benefit Life Insurance Company, 13 Allen, 308; American Law Review, vol. 2d, 1867 and '68.

‖Eastabrook *v.* Union Mutual Life Insurance Company, 54 Maine, 224; American Law Review, vol. 3, p. 128.

Breasted *vs.* Farmers' Loan and Trust Company, 4 Hill, 73. The declaration was on a policy of insurance upon the life of Hiram Comfort, the plaintiff's intestate. The policy contained a clause providing that, in case the assured should die upon the seas, or by his own hand or in consequence of a duel, or by the hands of justice, &c, the policy should be void. The defendant pleaded that Comfort committed suicide by drowning himself in the Hudson River. Replication, that when the assured drowned himself he was of unsound mind and wholly unconscious of the act.

W. C. Noyes for the defendant insisted that the replication furnished no answer to the matter set forth in the plea. He commented on Chitty's Medical Jurisprudence, 354. Rex *v.* Saloway (3 Modern Cases, 100); Smith's Mercantile Law, 256; Ellis on Insurance, 102–3; Blaney on Life Assurance, App., 151; McCull's Com. Dictionary, 710, 711, edition of 1839; Jacob's Law Dictionary, title "Felo de se," same title, Homicide, 111; Burns' Law Dictionary, "Felo de se;" Webster's Dictionary, "Suicide;" Park on Insurance, 578, 585, 586, 6th London edition; 1 Phil. on Insurance, 577, 2d edition; Bell's Principles of Law of Scotland, 203, Section 523, 4th edition; Smith's For. Med., 518. Tyrie *v.* Fletcher, Cowp., 699. Bernon *v.* Woodbridge, Dougl., 789. The Amicable Society *v.* Bolland, 4 Bligh's Reports, N. S., 194 (2 Dow. & Clark, 1 S. C.); (Margins on Insurance, 32).

Mr. Sherwood, for the plaintiff, cited and commented on (1 Hale's P. C., 412), (1 Hawks' P. C., Chap. 9, Secs. 1–6); Wood's Inst., 345; 4 Black. Com., 189.

By the Court, Nelson, Ch. J.: The question arises upon the demurrer, whether Comfort's self-destruction, in a fit of insanity, can be deemed a death by his own hand, within the meaning of the policy. I am of opinion that it cannot. Since the argument of the case, I have examined many precedents of life policies used by the different insurance companies, and am entirely satisfied that the words in the policy in question import a death by suicide; provisos declaring the policy to be void in case the insured commit suicide, or die by his own hand, are used indiscriminately by different insurance companies as expressing the same idea; and so they are evi-

dently understood by the writers upon this branch of the law. The policies of the "Society for Equitable Assurance upon Lives," and of the "Crown Life Assurance Company" contain the same form of expression as that employed in the policy in question (Ellis on Insurance, 230, 234); and Ellis refers to the phraseology as importing the usual condition to be found in all the policies, though a majority of them probably use the word *suicide*. That word is used in the policies issued by the following companies, viz: the Royal Exchange and London Assurance, the Westminister Society, the Equitable Assurance, the Pelican Life Insurance (Marsh on Insurance, 780), and the Sun Life Assurance (2 McCull's Com. Dict., 93, 94, American Edition); and it is said by the American editor of the book last cited (p. 95, note), that the policies issued in this country contain the same phraseology (See also 3 Kent's Com., 369).

Mr. Selwyn mentions several of the insurance companies above named and others, including those whose policies contain the same words as the one in question, and speaks of the proviso as meaning, in all cases, an act of suicide (2 Selw. N. P. by Wheaton, 788 to 790, American edition of 1823; also Smith's Mercantile Law, 256).

The connection in which the words stand in the policy would seem to indicate that they were intended to express a criminal act of self-destruction; as they are found in conjunction with the provision relating to the termination of the life of the insured in a duel, or by his execution as a criminal. This association may well characterize and aid in determining the somewhat indefinite and equivocal import of the phrase. Speaking legally also (and the policy should be subjected to this test), self-destruction by a fellow being bereft of reason can with no more propriety be ascribed to the act of his own hand than to the deadly instrument that may have been used for the purpose. The drowning of Comfort was no more his act, in the sense of the law, than if he had been impelled by irresistible physical power; nor is there any greater reason for exempting the company from the risk assumed in the policy than if his death had been occasioned by such means. Construing these words, therefore, according to their true, and,

as I apprehend, universally received meaning among insurance offices, there can be no doubt that the termination of Comfort's life was not within the saving clause of the policy. Suicide involves the deliberate termination of one's existence, while in the possession and enjoyment of his mental faculties. Self-slaughter by an insane man or a lunatic is not an act of suicide within the meaning of the law (Blackstone's Commentaries, 189; 1 Hale's P. C., 411, 412).

I am of opinion, therefore, that the plaintiff is entitled to judgment on the demurrer, and it was accordingly so ordered. The decision of the Supreme Court was affirmed in the Court of Appeals, 4 Selden, 299, but not with unanimity; five judges voting for an affirmance and three for a reversal. The opinion of the majority, delivered by Judge Willard, and the dissenting opinion of Judge Gardiner, present the arguments on their respective sides, the latter sustaining the decisions of the English Courts.

Catharine S. Gibson, respondent, *vs.* The American Mutual Life Insurance Company, appellant (Transcript Appeals, Vol. V., p. 261). This was an action on a policy of insurance on the life of Marcus W. Gibson, issued March 8th, 1858, for seven years, payable to Catharine S. Gibson, his wife. The defences set up in the answer, and insisted upon on the trial, were:

First. That the proof furnished "omitted to state truly the cause of the death of said Marcus."

Second. That "the said Marcus W. Gibson committed suicide by designedly shooting and wounding himself, with the design and for the purpose of producing death, of which shooting and wounding said Marcus died."

The proofs furnished, and which were produced by the defendant on the trial and offered in evidence, were the certificate of the officiating clergyman at the funeral of Gibson, and the statement of John G. Meachem, the attending physician of Gibson during his last sickness, made in answer

to printed interrogations furnished by the defendant, and the affidavit of the plaintiff. The condition required, among other things, the proof should contain the names of the physician or physicians, and other friends in attendance, and the place and date of burial, the affidavit of the medical attendance, etc.

Gibson died on the 24th day of March, 1860. The defendant proved, by Gibson's declarations, that "he was crossing a log with his gun in his hand; that his foot slipped, and he fell off, and the gun went off and shot him through the bowels." After receiving the wound which caused his death, Gibson was brought to his own home, and lived about twenty-four hours.

The defendant put the following question to one of the witnesses: "Have you had an opportunity of knowing his religious sentiments?" and proposed to show that Gibson was an infidel. This evidence was excluded by the judge, and the defendant excepted to his decision.

To another witness the defendant put the question: "Did you know his religious sentiments?" and offered to show that Gibson was an atheist. This evidence was excluded, and the defendant excepted to the decision.

The jury rendered a verdict for the plaintiff, and upon an appeal to the General Term the judgment was affirmed.

In the decision of the Court of Appeals, Ch. J. Hunt says: "In his elaborate argument the defendant's counsel insists, as his first ground of appeal, that the preliminary proofs were deficient in that they did not contain the affidavit or certificate of Dr. Bartlett, as one of his attending physicians. Although he had been a practising physician, Dr. Bartlett was not such at the time of the death of Gibson and had not been for some years previous. He was one of the sympathizing friends, who, on occasions of accident or death, are present to give aid and comfort. Mrs. Gibson, immediately on the arrival of her husband, dispatched a messenger for Dr. Meachem, the family physician. In the meantime, the wounded man being in great pain, some one suggested that Dr. Bartlett had better make an examination of his wounds. Mrs. Gibson assenting, he did so, and also gave him morphine

to relieve his pain. Upon the arrival of Dr. Meachem, he took charge of the case.

"It does not appear that Dr. Bartlett acted in any other than a friendly capacity, or that he had at any time desired or expected compensation for his services. I do not know that he could claim compensation in money for his kind offices, any more than could the other neighbors present and assisting. The defendant did not make any request that this question should be submitted to the jury; but claimed, as a matter of law, that Dr. Bartlett was an attending physician. This claim cannot be sustained.

"The question in contention at the Circuit was, whether the death of the deceased was accidental or whether it was a case of intentional self-destruction. To aid in elucidating this inquiry, the defendant insists that he had the right to show that the deceased was an infidel and an atheist, and thence to draw an argument in support of the theory of intentional suicide. The defendant insists upon the competency of this evidence, upon the further ground that every man is presumed to be a Christian; that the Christian religion prohibits self-slaughter; that this presumption may operate upon the minds of the jury, and should be allowed to be overthrown by the testimony offered. It is not necessary to say how far, or how precisely the presumption of personal Christianity exists. That we live in a Christian country is certainly acknowledged by the laws of the land, which prohibit blasphemy and profanity, and enjoin the observance of Sunday. That we believe in a governing Providence, by whom crime will be punished and virtue rewarded, is assumed in every oath that is administered. To say, however, that every man is presumed to be a personal Christian, upon whose mind, and upon whose actions, the precepts of the Gospel exercise an influence, is so much against our common experience, that it cannot be admitted as a legal principle. It may be argued, however, that a man may hold this belief, although his actions be not at all times influenced by it. This is probably true; and here arises the difficulty in the admission of the evidence offered. It is speculative, uncertain, remote, and based upon no well-defined legal principles. Consider the great variety of creeds held by those

calling themselves Christians. We find not only the Roman Catholic, the Episcopalian, the Presbyterian, the Methodist, and Baptist, but a large class who believe in the punishment of sin in this world, and the ultimate salvation of the whole human race. These are all Christians in every acceptation of that term. They all acknowledge the inspiration of the Holy Scriptures and the obligation of its commands. In what way, and how far, do these systems of belief operate upon the conduct of man?

"Is it certain that he who believes in the eternal punishment of the impenitent in a future world is a better observer of the laws of his country, and more free from actual crime than he who denies that doctrine? Or is it certain that he who believes in the final salvation of all men would refrain from an offence which he would have committed had he believed there was no future state? No man can answer with certainty.

"Does the fact that a man believes in the Christian religion furnish legal evidence that in a particular case he has not violated the laws of God, or of his country? Experience teaches us that not only believers in the Christian religion, but those who for years have had the highest evidence that they might expect the ultimate reward of the true Christian, are guilty of grave offences, moral and legal. The law takes man as he is, with his passions, his appetites, his moral training and his religion. With all these elements, his life is a struggle and a contradiction. What his actions will be, can be determined by no form of belief, and by no fixed principle of law. Each man's case will be different from that of his neighbor, and from day to day will be different from his own. The "Infidel" is one who does not recognize the inspiration or obligation of the Holy Scriptures, or the generally recognized features of the Christian religion. The "Atheist" is one who does not believe in the existence of a God. The result of this absence of belief upon his actions is speculative entirely. Does his soul shrink back at the idea of annihilation? We know not. He may not admit the existence of a soul, and the eternal rest of the grave may form his idea of Paradise. On the one side would stand the idea of annihila-

tion, and on the other that of an offended God. Who can say, as a matter of fact, which would produce the strongest effect upon the human mind? Is there any feeling or principle stronger than that instinctive dread of death, which all men feel, and which neither the faith of the Christian nor the reasoning of the Atheist can overcome? It does not depend upon life or faith. It is instinctive and common to all men. It would, in my judgment, be incompetent to impeach one's conduct, and to adjudge one's motives and principles upon the proposed idea.

"To adjudge that a man's belief in Christianity will prevent, or tend to prevent, the commission of suicide, or that Atheism will produce, or tend to produce, a contrary effect, is to adopt a principle more subtle and speculative, more uncertain and more remote, than the law can recognize. If a sound argument, it would be applicable, to some extent, in every case where character was in evidence. Would it be a just ground of impeachment of the good character of a party to an action, that he is an Infidel, or an Atheist?

"If Gibson had been the plaintiff, in an action of slander, could his opponent have reduced his damages by showing his belief in these respects? If he had been indicted for murder, and the question of character had been introduced into the issue, could the prosecution have attacked him by showing his scepticism? or could he have sustained his character by proof that he held a religious belief? Such a suggestion finds no countenance in the authorities. Conduct and life, distinguished from belief, give the standard of character. In law it would be a totally immaterial circumstance. It affords no certain practical test of conduct. The offer, in the present case, is based upon the same idea; and the argument in its defence, although plausible and attractive, cannot be sustained.

"Judgment should be affirmed, with costs; all concurring, it was affirmed."

The following case has been selected as representing the important features in relation to intemperance and other bad habits which are calculated to injure the health of the insured, and the principle seems to be well established, that it is the business of the insurers to question the party about to be

insured fully in reference to all his habits of eating and drinking; and also in regard to any other habit which is calculated to impair or injure his constitution, but beyond that he is not bound to disclose any fact not called for by a general or specific question.

Rawls *v.* The American Life Insurance Company, 36 Barbour's Supreme Court Reports, page 357 (affirmed in 27 N. Y., 282). Motion for a new trial upon a case and exceptions. The action was upon a policy of insurance, issued by the defendant, dated July 28th, 1853, for $5,000, on the life of John L. Fish of Rochester, N. Y., payable to the plaintiff. The complaint averred the execution and delivery of the policy, and set forth the policy and the conditions annexed thereto. It also averred the payment of the annual premiums on the policy up to July 1, 1857, the interest of the plaintiff in the life of Fish, the death of Fish at Rochester, on the 24th day of February, 1857; that from the time the policy was made, to his death, Fish fully performed and complied with all the conditions of the policy to be performed and complied with by him, and did not do any act or thing prohibited by the terms of the policy; and that the policy was in full force at the time of his decease; that due notice and proof of the death of Fish, and of the circumstances attending the same, were furnished to the defendant, March 6, 1857, in the manner provided in the conditions annexed to the policy; and that although more than ninety days had elapsed since the notice and proofs were furnished, the defendant had not paid the $5,000.

The answer of the defendant contained five articles or parts. The first ignored and so traversed the plaintiff's interest in the life of Fish; the second alleged that Fish did not perform and comply with all the conditions of the policy to be performed and complied with by him, and did many acts and things prohibited by the terms of the policy. Also, that the plaintiff had not made proof, in the manner provided in the conditions annexed to the policy, of the death of Fish, and that such pretended proofs omitted to state truly the cause of his death.

The third averred, that among the written statements and representations made to the defendant by the plaintiff, respecting the life, health, &c., of Fish, presented to the defendant before issuing the policy, and in consideration of which the policy was issued, there was a written statement and representation by Fish, in which he stated and represented that his health was at that time good; that he had not been afflicted since childhood with liver complaint or general debility. There was also a statement by one Shipman, in which Shipman stated that he believed Fish to be then in good health; that he considered Fish healthy and free from any circumstance tending to shorten life; that he believed Fish did not indulge in any habits or practices which had impaired or would impair his health or constitution; that he believed that the occupation, employment and manner of life of Fish did, in his opinion, agree with his constitution; and that Fish's prospects of attaining old age were as good as those of any man. That the plaintiff and Fish, at the same time, referred to one Marsh respecting the general health and manner of life of Fish, and procured and delivered, or caused to be procured and delivered to the defendant, a paper signed by Marsh, and which was one of the written statements on which the policy was issued, in which Marsh declared that Fish did not, to his knowledge, indulge in any habits or practices which had impaired or would impair his constitution and general health; that he had not any reason to believe that Fish had an impaired or feeble constitution; that he considered Fish healthy and free from any circumstances tending to shorten life; that his opinion was, considering the general longevity of Fish's family, his occupation, habits, constitution, general and present health, that the chance of Fish's living to old age was as good as that of ordinary persons. That the plaintiff and Fish procured from one Holmes, and forwarded to the defendant, a statement of Holmes, that Fish did not, in his opinion, indulge in any practices or habits which had impaired or would impair his constitution and general health; that he believed the questions contained in the application were fully and properly answered, and that no material fact was omitted; and that

Fish was likely to live to old age. That the policy was issued on the express warranty of the party assured; that all the said statements were, and each of them was, true; and that if any misrepresentations or concealments were contained in the statements or representations the policy should be void, and all the premiums should be forfeited to the company. And that each and every statement in the said written statements and representations of Fish, Shipman, Marsh and Holmes, in this article of the answer referred to, was false; that Fish and the plaintiff, before and at the time of issuing the policy, had notice thereof; and that, by reason of the premises, the policy was void.

The fourth article of the answer averred, that before, and at the time of issuing the policy, Fish was and had long been a man of licentious, intemperate and disorderly habits and practices, and frequently or habitually indulged in habits and practices which had impaired or would impair his health and constitution, and shorten his life; and in the frequent or constant habit of neglecting or violating the laws or rules of good conduct or regimen, on which health and long life greatly depend. All which the plaintiff, Fish, Shipman and Marsh, well knew, or had good reason to believe, at the time their representations were made, and at and before the issuing of the policy; and though the defendant was ignorant thereof, they did not, nor did any of them, give notice thereof to the defendant, but concealed the same; and the policy was, therefore, void.

The fifth article averred, that Fish "died in consequence of intemperate drinking," and, that by reason thereof, the said insurance ceased and terminated, and no right of action accrued thereon to the plaintiff.

On the trial the defendant, on the call of the plaintiff, produced, and the plaintiff put in evidence, the proofs of loss furnished by him to the defendant, and proved that such proofs were delivered to the defendant in March, 1857. The plaintiff also proved that on the 28th day of May, 1850, Fish and one Holmes, as partners, were indebted to the firm of Reed & Rawls, of which the plaintiff was a member, in the sum of $9,675.73, and that no part of the debt had been paid.

The plaintiff then rested, and the defendant moved for a nonsuit, which was denied, and the defendant excepted. The defendant then offered and read in evidence the statements of Fish, Shipman and Marsh, and adduced testimony for the purpose of showing that, prior to the application for the policy in suit, July, 1853, Fish was of intemperate habits. The plaintiff adduced testimony tending to show that Fish was not of intemperate habits when the policy in suit was applied for.

The Court then charged the jury; to portions of which charge the counsel for the defendant excepted. The following question was submitted to the jury for their answer. Question: "Was John L. Fish, on the 16th day of July, 1853, to the knowledge of Mr. Marsh, in the habit of intemperate drinking, to such an extent as had impaired or would, in the opinion of Mr. Marsh, impair his constitution or general health?" The jury found a verdict for the plaintiff for $6,081.57, and answered the question submitted to them, as follows: "The jury think the statement made by Mr. Marsh, on the 16th day of July, 1853, was truthfully made, according to the best of his knowledge.

By the Court, Johnson, J.: The contract of insurance, if honestly and fairly obtained, was a valid contract in its inception. The plaintiff had an interest in the continuance of the life of the party insured, being his creditor. The fact that the debt was due to him, as a member of a partnership, and from another partnership of which Fish was a member, can make no difference. Fish, as a member of his firm, was individually liable for the whole debt, and the plaintiff, as a partner in his firm, was interested in the whole debt. It seems to me there is no difficulty whatever in this. The contract of insurance does not relate to the payment of the debt, but to the continuance of the life insured; and all that is necessary to make the contract a valid one is, that the party procuring it should have some interest in the continuance of such life (Ruse *v.* Mutual Benefit Insurance Co., 23 N. Y. Reports, 516).

I do not see upon what principle the previous declarations of Fish, in respect to his habits, could have been admitted as

evidence upon the trial. It was not his contract, and he had no authority to bind the plaintiff by any statement he might make in regard to himself, whether true or false; it would have been mere hearsay, and was properly rejected. His declarations, as between these parties, were incompetent to prove either the fact of his previous intemperate habits, or the fact of the suppression of the information. The question to the witness Moore, as to whether he would regard a person who was in the habitual use of intoxicating drinks to excess, an insurable subject, was, I think, properly overruled. The witness, however eminent as a physician, might have very little knowledge as to what kind of persons insurance companies might properly venture to insure. Even if he had been in the business and practice of insuring lives, the evidence would have been incompetent, as it would have been, in effect, but an opinion as to what insurers of lives ought to do in certain cases. Jefferson Insurance Company *v.* Cotheal, 7 Wend., 72, 78 & 79; Campbell *v.* Rickards, 5 Barn. and Adolphus, 840; 27 Eng. C. L. Reports, 207.

The evidence in answer to the question put to the witness Holmes, as to whether in his opinion Fish did, at the time, indulge in any practices or habits which had impaired, or which would impair his constitution and general health; and also, that in answer to the question put to the witness Shipman, as to whether he believed his answers to questions in the papers correct at the time, can only be sustained on the ground that the defendant, in its answer, had directly alleged that these persons in answering the questions in the papers, upon which the policy was issued, had in these respects made statements contrary to their opinions and to what they believed to be true. As the defendant had in its answer made that issue, I think it was competent for the plaintiff to meet it by his evidence. The questions put to the witness Shipman, and also to the witness Dean, as to what opinions would have been in respect to Fish's health and the character of the risk, if they had known his habits and practices to be as alleged by the defendant, were of the same character as the question to the witness Dr. Moore, and were properly overruled for the same reason. I think the

statements of Dean and Holmes were properly received in evidence as part of the papers on which the policy was issued.

The Judge charged, that inasmuch as Marsh was referred to as an acquaintance and friend of Fish, the plaintiff would be responsible for the good faith, and for the truth and honesty of such statements, and if they were untrue in point of fact, it would avoid the policy, whether such untruth originated in fraud, or mere negligence or want of recollection. This, it seems to me, was going quite far enough; I think the judge was right also, in charging the jury that if Fish answered truly all the questions put to him, without evasion or concealment, it was sufficient, and that it was not necessary for him to make any statement in respect to any particular habit, not called for by any general or specific question put to him; and that the omission, under such circumstances, to make any statement in respect to such habit, would not be such a concealment as to avoid the policy. As to the condition of his health he did answer fully, and as the jury have found, truly, all the questions propounded. But in respect to his habits of eating or drinking, no questions were put to him, and he had the right to suppose that no information was desired by them upon that subject, and the omission to give it in such case is no concealment; no Court would, I think, require a party to make a statement as to his habits and practices, some of which might possibly operate prejudicially upon his health, where nothing of the kind is called for by the questions propounded. The presumption is, that the insurers questioned the party upon all subjects which they deemed material, and all which were within the contemplation of the parties at the time, and beyond that, clearly a party is not bound to disclose. There was therefore no error, either in the rulings on the trial or in the charge, and a new trial must be denied.

The above leading cases clearly establish the following points:

First. The English decisions strictly construe the words "die by his own hands or the hands of justice," or the words

"commit suicide," as extending to all voluntary acts whether the party committing such acts was sane or insane.

Second. The American cases, with few exceptions, construe the same words as meaning only criminal acts of self-destruction, and do not extend to acts not under the control of the will.

Third. That it is the business of the insurers to obtain, by general or specific questions, a full statement of the habits and constitution of the insured, and when these have been answered in good faith by the insured, the policy will be held good.

WILLIAM SHRADY.
195 Broadway, New York.

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